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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 FRANCISCA RODARTE,

11 Plaintiff,

12 v.

13 TRIDENT SEAFOODS
14 CORPORATION,

15 Defendant.

CASE NO. C13-1028JLR

ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT

16
17 I. INTRODUCTION

18 Before the court is Defendant Trident Seafoods Corporation’s (“Trident”)
19 unopposed motion for summary judgment. (Mot. (Dkt. # 21).) Plaintiff Francisca
20 Rodarte filed this lawsuit against Trident over a year ago, and has since participated in
21 discovery and filed several documents with the court including a motion for default
22 judgment. (*See* Dkt. ## 5, 13, 14.) However, when Trident filed a motion for summary
judgment disposition of the entire case in late July, Ms. Rodarte failed to file any

1 response. (*See* Dkt.) The time for filing a response has now passed, and the motion is
2 ripe for the court's consideration. Accordingly, the court has examined the motion, the
3 governing law, the record, and the submissions of the parties. Being fully advised, the
4 court finds that Trident has demonstrated that it is entitled to judgment as a matter of law
5 and therefore GRANTS Trident's motion for summary judgment.

6 **II. BACKGROUND**

7 This is an employment discrimination case set in a remote Alaskan cannery.
8 Plaintiff Ms. Rodarte worked as an employee of the cannery for over twenty years.
9 (Compl. (Dkt. # 3) ¶ 5.) Defendant Trident owns and operates the cannery, which is
10 situated in Akutan, Alaska, a tiny harbor town on Akutan Island in southeast Alaska.
11 (Compl. ¶ 6; Heine Decl. (Dkt. # 26).) Akutan is located in the Aleutian chain a “short
12 distance” from the comparatively larger town of Dutch Harbor but can be reached only
13 by seaplane or boat. (Heine Decl. ¶ 2; Compl. ¶ 9.) Trident’s Akutan facility—
14 commonly referred to as a “shore plant”—operates year round, houses as many as 1200
15 employees at any given time, and is capable of processing three million pounds of fish
16 per day. (Heine Decl. ¶ 2.)

17 The events that gave rise to this lawsuit took place in late October 2011. (Compl.
18 ¶ 6.) Ms. Rodarte alleges that, around that time, she was suffering from a “severe
19 toothache.” (*Id.* ¶ 7.) Evidently, a crown had fallen off of her tooth several weeks earlier
20 and the tooth that remained began to cause her pain. (*Id.*) She claims that by late
21 October, her face was swollen and she was in “obvious pain.” (*Id.*) On October 27,
22 2011, she visited a health care center in Akutan where she was seen by a doctor. (*Id.*)

1 ¶¶ 8, 9.) She was given penicillin and ibuprofen and told to gargle salt water. (*Id.*;
2 Newberry Decl. (Dkt. # 25) ¶ 8.) The physician who treated her observed that she “could
3 speak without apparent distress and did not appear to be otherwise incapacitated by pain.”
4 (Newberry Decl. ¶ 7.) He advised Ms. Rodarte that if her symptoms did not improve, she
5 should return to the clinic to “figure out a new approach.” (*Id.* ¶ 9.) Ms. Rodarte did not
6 return to the clinic. (*Id.* ¶ 11.) There was no dentist on Akutan, although there was a
7 dentist in nearby Dutch Harbor. (*Id.* ¶ 5; Compl. ¶ 9.)

8 On October 30, 2011, a boat arrived to take workers to Dutch Harbor. (Compl.
9 ¶ 10.) At that time, Ms. Rodarte had three days remaining on her seasonal contract with
10 Trident. (*Id.*) She alleges that she asked the assistant plant manager if she could leave
11 three days early to seek treatment for her toothache but that he told her to wait until her
12 contract expired. (*Id.*) Ms. Rodarte then quit her job, alleging that she “was
13 incapacitated by pain and had no reasonable alternative than to quit to obtain medical
14 services.” (*Id.* ¶ 11.) She alleges that she was “forced to quit,” and that as a result she
15 had to purchase her own airplane ticket from Dutch Harbor to Seattle for \$839.40. (*Id.*
16 ¶ 13.) She returned to her home town of Walla Walla shortly thereafter, and received
17 dental treatment just over a week later—twelve days after she quit her job and left
18 Akutan. (Hendershott Decl. (Dkt. # 22) Ex. A (“Rodarte Dep.”) at 129, 134.) She had a
19 tooth extracted on December 27, 2011. (*Id.*)

20 Ms. Rodarte alleges that she suffered adverse employment consequences because
21 of her decision to quit. (Compl. ¶ 15.) She claims that Trident did not hire her until later
22 than usual in the 2012 season. (*Id.*) She also says she received an email stating that she

1 was not rehired for the 2012 season but that she received another email hours later saying
2 she was, in fact, rehired. (*Id.*) She worked for Trident for three seasons in 2012 and
3 2013, including the very next season after she quit. (Rodarte Dep. at 183-84.)

4 Ms. Rodarte eventually filed an employment discrimination claim with the Alaska
5 Human Rights Commission. (Compl. ¶ 17.) Trident participated in the Commission's
6 investigation. (*See* Hendershott Decl. Ex. D.) The Commission eventually found that the
7 allegations of discrimination were not supported by substantial evidence and dismissed
8 her claims. (*Id.*)

9 Ms. Rodarte filed this complaint in June, 2013. (*See* Dkt.) In her complaint, she
10 alleges employment discrimination, constructive discharge, retaliation, and negligence
11 claims against Trident. (Compl. ¶¶ 20-21, IV.2-3.) These claims are based on Trident's
12 refusal to allow her to depart Akutan early to get medical care for her toothache. (*See id.*)
13 She also alleges a claim for defamation based on Trident's participation with the Alaska
14 Human Rights Commission's investigation of her claims. (*Id.* ¶¶ 19-20.) She alleges that
15 Trident employees lied to the Commission, which resulted in a "report full of lies" that
16 "destroys her work reputation." (*Id.* ¶ 20.) She requests a damages award of
17 \$1,075,000.00. (*Id.* ¶¶ 22, IV.4.)

18 Trident moved for summary judgment, arguing primarily that Ms. Rodarte has no
19 evidence to support any of her claims. (*See* Mot.) Trident has produced a substantial
20 amount of documentary and testimonial evidence in support of its arguments. (*See id.*)
21 In contrast, Ms. Rodarte has not filed a response brief, let alone any evidence that tends
22

1 to favor her version or interpretation of events. (*See* Dkt.) Thus, Trident's motion for
2 summary judgment is unopposed.

III. ANALYSIS

A. Standard on an Unopposed Summary Judgment Motion Where the Plaintiff is Pro Se

In general, summary judgment is appropriate if the evidence, when viewed in the light most favorable to the non-moving party, demonstrates “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. Cnty. of L.A.*, 477 F.3d 652, 658 (9th Cir. 2007). A fact is “material” if it might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is “genuine” if the evidence is such that reasonable persons could disagree about whether the facts claimed by the moving party are true. *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th Cir. 1983).

The moving party bears the initial burden of showing that there is no genuine issue of material fact and that he or she is entitled to prevail as a matter of law. *Celotex*, 477 U.S. at 323. If the moving party meets its burden, then the non-moving party “must make a showing sufficient to establish a genuine dispute of material fact regarding the existence of the essential elements of his case that he must prove at trial.” *Galen*, 477 F.3d at 658. The court is “required to view the facts and draw reasonable inferences in the light most favorable to the [non-moving] party.” *Scott v. Harris*, 550 U.S. 372, 378 (2007). The ultimate question on a summary judgment motion is whether the evidence

1 “presents a sufficient disagreement to require submission to a jury or whether it is so one-
 2 sided that one party must prevail as a matter of law.” *Anderson*, 477 U.S. at 251-52.

3 Even where a summary judgment motion is unopposed, the Ninth Circuit takes the
 4 view that a non-moving party’s failure file a response as required by local rules “does not
 5 excuse the moving party’s affirmative duty under Rule 56 to demonstrate its entitlement
 6 to judgment as a matter of law.” *See Martinez v. Stanford*, 323 F.3d 1178, 1182 (9th Cir.
 7 2003) (citing Fed. R. Civ. P. 56). Thus, heeding the requirements of *Martinez*, the court
 8 will analyze Trident’s motion for summary judgment on the merits. However, where a
 9 defendant has met its burden of demonstrating an absence of material factual issues for
 10 trial, the court cannot create an issue for a plaintiff who has not submitted any
 11 countervailing evidence.

12 The fact that Ms. Rodarte is appearing pro se does not alter the applicability of
 13 these general summary judgment rules. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir.
 14 1995) (noting that although the court construes pleadings liberally in their favor, “[p]ro se
 15 litigants must follow the same rules of procedure that govern other litigants”); *Semper v.*
 16 *JBC Legal Group*, No. C04-2240L, 2005 WL 2172377, at *1 (W.D. Wash. Sept. 6,
 17 2005).¹ Accordingly, although Ms. Rodarte is appearing pro se, the court is obligated to
 18 hold her to the same standards as it would any other non-moving party on a motion for

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 20 ¹ In fact, in *Jacobsen v. Filler*, 790 F.2d 1362 (9th Cir. 1986), the Ninth Circuit rejected
 21 the argument that pro se non-prisoner litigants are entitled to notice from the court concerning
 22 Rule 56 requirements. *Id.* at 1364. In doing so, the Ninth Circuit unequivocally stated that “pro
 se litigants in the ordinary civil case should not be treated more favorably than parties with
 attorneys of record.” *Id.*

1 summary judgment. Trident bears the initial burden of showing there are no material
2 factual disputes and it is entitled to judgment as a matter of law; if it does so, the court is
3 not required to create disputes where there is no contrary evidence and may grant
4 summary judgment in Trident's favor.

5 **B. There Are No Genuine Disputes of Material Fact**

6 As an initial matter, Trident has met its burden of demonstrating that there are no
7 genuine issues of material fact that would preclude summary judgment. Trident presents
8 evidence to support its factual assertions where they differ from the assertions made in
9 Ms. Rodarte's complaint. Ms. Rodarte has presented no evidence whatsoever to
10 contradict Trident's facts. The court has examined the entire record in this case and
11 determined that nothing contained therein creates a dispute of material fact, whether
12 submitted by Trident or Ms. Rodarte. Accordingly, there are no "genuine" disputes
13 because the evidence is such that reasonable persons could not disagree about whether
14 the facts claimed by Trident are true. *See Aydin Corp.*, 718 F.2d at 902. This is not to
15 say, of course, that every fact propounded by Trident is true, only that a reasonable
16 person viewing the evidence in the record could not reasonably conclude otherwise. *See*
17 *id.*

18 **C. Trident is Entitled to Judgment as a Matter of Law**

19 The court has examined each of Ms. Rodarte's claims in light of all the evidence
20 in the record and concludes that Trident is entitled to summary judgment on each claim.
21 In general, Trident presents evidence to support its version of what happened: that Ms.
22 Rodarte demanded to leave Akutan three days early, that her supervisor rejected her

1 demand for reasons that were not discriminatory, that she quit on the spot, and that
2 Trident hired her back the following year without any repercussions or other action that
3 could be construed as discriminatory or otherwise unlawful. Ms. Rodarte has presented
4 no evidence at all to the contrary, and there is nothing anywhere in the record that
5 suggests a genuine dispute of material fact. Accordingly, Trident's version of the facts
6 carries the day. With this in mind, the court examines each of Ms. Rodarte's five claims
7 individually.

8 1. Constructive Discharge

9 Ms. Rodarte alleges that she was constructively discharged from her job with
10 Trident because she was not permitted to leave Akutan three days before her contract
11 expired. (Compl. ¶ 11-12.) She alleges that the pain in her tooth was so bad that she had
12 no choice but to quit her job and seek medical treatment as soon as possible. (*Id.*)

13 To demonstrate constructive discharge, a plaintiff must meet a demanding
14 standard. The federal and Washington standards for constructive discharge are similar.
15 In Washington, “while resignations are presumed to be voluntary, a plaintiff may
16 overcome that presumption . . . by demonstrating a deliberate act by the employer that
17 made her working conditions so intolerable that a reasonable person would have felt
18 compelled to resign.” *Washington v. Boeing*, 19 P.3d 1041, 1049 (Wash. Ct. App. 2000).
19 Likewise, the federal standard requires a plaintiff to “show that the abusive working
20 environment became so intolerable that [the plaintiff’s] resignation qualified as a fitting
21 response.” *Penn. State Police v. Suders*, 542 U.S. 129, 133 (2004). This is an objective
22 standard. *Id.* at 146-47. Furthermore, “[a] plaintiff alleging constructive discharge must

1 show some aggravating factors, such as a continuous pattern of discriminatory
2 treatment.” *Schindrig v. Columbia Mach., Inc.*, 80 F.3d 1406, 1411-12 (9th Cir. 1996)
3 (citing *Sanchez v. City of Santa Ana*, 915 F.2d 424, 431 (9th Cir. 1990)). The Ninth
4 Circuit has upheld factual findings of constructive discharge when the plaintiff was
5 subjected to incidents of differential treatment over a period of months or years. *Watson*
6 *v. Nationwide Ins., Co.*, 823 F.2d 360, 361 (9th Cir. 1987).

7 Trident has demonstrated that Ms. Rodarte cannot meet this standard. Trident’s
8 evidence demonstrates that there was no “deliberate act” by any Trident employee to
9 make Ms. Rodarte’s working conditions intolerable, *Boeing*, 19 P.3d at 1049, and that
10 indeed Ms. Rodarte’s supervisor, Mr. Heine, did not know that Ms. Rodarte had been to
11 see the doctor for her toothache or even that she was Mexican. (Heine Decl. ¶¶ 11-12,
12 18.) There is nothing in the record to demonstrate that “the abusive working environment
13 became so intolerable that . . . resignation qualified as a fitting response.” *Suders*, 542
14 U.S. at 133. The only thing that could possibly be construed as intolerable would be Ms.
15 Rodarte’s tooth pain, and the evidence shows that she did not even seek treatment for that
16 pain immediately upon returning to Dutch Harbor or, for that matter, to Walla Walla.
17 (Rodarte Dep. at 129, 134.) She did not have the offending tooth extracted until
18 December 27, 2011. (*Id.*) Likewise, Ms. Rodarte’s treating physician in Akutan
19 concluded that Ms. Rodarte “could speak without apparent distress and did not appear to
20 be otherwise incapacitated by pain.” (Newberry Decl. ¶ 7.) None of this suggests an
21 intolerable or abusive working environment, and certainly there is no evidence of
22 “aggravating factors, such as a continuous pattern of discriminatory treatment.”

1 | *Schindrig*, 80 F.3d at 1412. Accordingly, Trident has met its summary judgment burden
 2 for Ms. Rodarte's constructive discharge claim. *See Celotex*, 477 U.S. at 323.

3 2. Retaliation

4 Next, Ms. Rodarte alleges that Trident retaliated against her. (Compl. ¶ 15.) She
 5 claims that, after she quit, Trident initially refused to hire her back for a month and a half.
 6 (*Id.*) To prevail on a retaliation claim, Ms. Rodarte must show: (1) that she engaged in a
 7 protected activity; (2) that she suffered an adverse employment action; and (3) that there
 8 was a causal connection between the protected activity and the adverse employment
 9 action. *Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 965 (9th Cir. 2004). The
 10 showings required for a retaliation claim under both of Title VII of the Civil Rights Act
 11 of 1964 ("Title VII") and Washington law are identical, except for the causation element.
 12 *Ellorin v. Applied Fishing, Inc.*, No. C12-1923JLR, 2014 WL 498969, at *9 (W.D. Wash.
 13 Feb. 7, 2014) (stating that Title VII requires "but-for" causation, while WLAD only
 14 requires that discrimination be a "substantial factor" in causing the retaliatory conduct).

15 Trident has demonstrated that Ms. Rodarte cannot succeed on her retaliation
 16 claim. To begin, Trident has shown that there was no adverse employment action. As
 17 discussed above, Ms. Rodarte was not constructively discharged. In addition, Trident has
 18 presented evidence that it rehired Ms. Rodarte for three seasons in 2012 and 2013 after
 19 her toothache incident, including the very next season after the incident. (Rodarte Dep. at
 20 183-84.) Trident has also presented evidence to show that (1) the delay in rehiring her
 21 was a result of ordinary business practices and procedures or inadvertent errors (Korn
 22 Decl. (Dkt. # 24) ¶¶ 2-7); (2) Ms. Rodarte was allowed to work longer at the end of the

1 season because she was hired later (*id.* ¶ 6); and (3) any delay in rehiring Ms. Rodarte
2 had no connection to the previous incident, and certainly had no connection to any
3 protected activity by Ms. Rodarte or any discriminatory motive on the part of any Trident
4 employee (*id.* ¶¶ 2-7; Heine Decl. ¶¶ 16-18.) Ms. Rodarte has presented nothing to rebut
5 any of this evidence, so Trident is entitled to summary judgment on Ms. Rodarte's
6 retaliation claim.

7 3. Employment Discrimination

8 Ms. Rodarte brings two further employment discrimination claims. First, she
9 claims that Trident's actions against her amounted to age discrimination. (Compl. ¶¶ 12,
10 21, IV.2-3.) She alleges that “[y]ounger employees are given the opportunity to seek
11 medical assistance when needed” and that “if she had been of a different age . . . her
12 employers would have excused her early.” (*Id.* ¶ 21.) Second, she claims that Trident's
13 actions against her amounted discrimination on the basis of her national origin. (*Id.*
14 ¶¶ 12, 21, IV.2-3.) Her allegations in this regard are cursory, but she asserts vaguely that
15 she would have been treated differently if she had not been Mexican. (*Id.* ¶ 21.)

16 The court analyzes each of these claims under the *McDonnell-Douglas* burden-
17 shifting approach used for summary judgment motions in Title VII employment
18 discrimination cases. *See, e.g., Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018,
19 1028 (9th Cir. 2006). Under this approach, the employee has the initial burden to
20 establish a *prima facie* case of discrimination. *Id.* This creates a presumption of
21 discrimination. *Id.* The burden then shifts to the employer, who must rebut the
22 presumption by producing admissible evidence showing a “legitimate, nondiscriminatory

1 “reason” for the challenged action. *Id.* If the defendant does this, the presumption of
2 discrimination disappears and the burden shifts back to the employee to meet the ordinary
3 standard of proof required for summary judgment. *Id.* In other words, summary
4 judgment is not appropriate if, based on the evidence in the record, a reasonable jury
5 could conclude by a preponderance of the evidence that the defendant undertook the
6 challenged employment action for a discriminatory reason. *Id.*

7 Here, Ms. Rodarte has not met her initial burden of establishing a *prima facie*
8 discrimination case. This is true with respect to both age and national origin
9 discrimination. To show a *prima facie* case of age discrimination, Ms. Rodarte must
10 demonstrate that (1) she was at least forty years old; (2) she was performing her job
11 satisfactorily; (3) she was discharged or otherwise adversely impacted; and (4) she was
12 either replaced by a younger employee or discharged under circumstances otherwise
13 giving rise to an inference of age discrimination. *Sheppard v. David Evans and Assoc.*,
14 694 F.3d 1045, 1049 (9th Cir. 2012). To show a *prima facie* case of disparate treatment
15 discrimination based on national origin, Ms. Rodarte must show that (1) she belongs to a
16 class of persons protected by Title VII; (2) she performed her job satisfactorily, was
17 qualified, and met the legitimate expectations of her employer; (3) she suffered an
18 adverse employment action; and (4) Trident treated her differently than a similarly
19 situated employee who does not belong to the same protected class. *Cornwell*, 439 F.3d
20 at 1028; *Flowers v. Crouch-Walker Corp.*, 552 F.2d 1277, 1282-83 (7th Cir. 1977).

21 Ms. Rodarte’s claims fail for several reasons. First, for both claims, Trident has
22 demonstrated with evidence that Ms. Rodarte did not suffer the requisite adverse

1 employment action. She was not discharged—she quit. As discussed above, there was
2 no constructive discharge. Further, Trident hired Ms. Rodarte back for three seasons
3 after her 2011 toothache incident. (Rodarte Dep. at 183-84.) To succeed on her claims,
4 Ms. Rodarte must show that Trident took some negative action toward her as a result of
5 the alleged discrimination. *Cornwell*, 439 F.3d at 1028; *Sheppard*, 694 F.3d at 1049.
6 She has not done so. As such, Trident’s evidence to the contrary carries the day. Second,
7 for both claims, Ms. Rodarte has come forth with no evidence whatsoever that any
8 alleged adverse action was the result of discrimination. For age discrimination, she has
9 not shown that she was replaced by a younger employee or discharged under
10 circumstances otherwise giving rise to an inference of age discrimination. *Sheppard*, 694
11 F.3d at 1049. There is simply nothing in the record to demonstrate this, nor are there
12 even sufficient non-conclusory allegations to this effect in her complaint. (*See generally*
13 Compl.) The same is true with respect to national origin discrimination: there is nothing
14 in the record to show that Trident treated Ms. Rodarte differently than a similarly situated
15 employee who does not belong to the same protected class, or that for any reason Ms.
16 Rodarte would have been treated differently if she had not been Mexican. *Cornwell*, 439
17 F.3d at 1028. Indeed, her supervisor, Mr. Heine, testifies that he did not even know she
18 was Mexican before she filed this lawsuit. (Heine Decl. ¶ 18.)

19 Given all of this, the court concludes that summary judgment is appropriate with
20 respect to Ms. Rodarte’s employment discrimination claims because she has not met her
21 burden under *McDonnell Douglas* of making a *prima facie* showing of age or national
22 origin discrimination.

1 4. Defamation

2 Fourth, Ms. Rodarte alleges a defamation claim based on Trident's participation in
3 the Alaska Human Rights Commission's investigation of her discrimination claims. (*Id.*
4 ¶¶ 19-20.) She alleges that Trident employees lied to the Commission, which resulted in
5 a "report full of lies" that "destroys her work reputation." (*Id.*) To prove a claim for
6 defamation, Ms. Rodarte must show: (1) falsity; (2) an unprivileged communication; (3)
7 fault; and (4) damages. *Commodore v. Univ. Mech. Contractors, Inc.*, 839 P.2d 314, 320
8 (Wash. 1992).

9 Trident has presented evidence showing it is entitled to summary judgment on this
10 claim. Specifically, the weight of the evidence presented by Trident shows that nothing it
11 told the Commission was false in any way. Indeed, the Commission's opinion is
12 completely consistent with Trident's version of the facts and the evidence Trident
13 presents to support that version of the facts. (*See* Hendershott Decl. Ex. D.) Ms. Rodarte
14 presents nothing to rebut these facts or to otherwise demonstrate that she has any
15 evidence to prove her defamation claim. (*See* Dkt.) Accordingly, the court concludes
16 that summary judgment is appropriate with respect to this claim.

17 Having reached this conclusion, the court declines to address Trident's arguments
18 with respect to Washington's "anti-SLAPP" statute or to award sanctions under that
19 statute. *See Rygg v. Hulbert*, No. C13-0864JLR, 2013 WL 6000060, at *4 n.3 (W.D.
20 Wash. Nov. 12, 2013) (declining to address anti-SLAPP arguments where case is
21 otherwise subject to dismissal); *Rickmyer v. Browne*, --- F. Supp. 2d ----, 2014 WL
22 460864, at *7, 9 (D. Minn. Feb 5, 2014) (declining to address anti-SLAPP sanctions in

1 light of merits-based dismissal); *New Show Studios LLC v. Needle*, No. 2:14-cv-01250-
 2 CAS(MRWx), 2014 WL 2988271, at *5 (C.D. Cal. June 30, 2014) (concluding that it is
 3 appropriate to address Rule 12(b)(6) dismissal before anti-SLAPP).

4 5. Negligence

5 Last, Ms. Rodarte alleges a claim for negligence. (Compl. ¶¶ 19, IV.2.) She
 6 alleges that “Trident had a duty to assist [her] to get medical help or allow her to leave
 7 without quitting. Trident violated that duty, causing [her] to have to quit her job.” (*Id.*
 8 ¶ 19.) To prove a claim for negligence under Washington law, a plaintiff must show (1)
 9 the existence of a legal duty; (2) breach of that duty; (3) injury to the plaintiff resulting
 10 from the breach; and (4) that the breach proximately caused the plaintiff’s injury. *Fabre*
 11 *v. Town of Ruston*, 321 P.3d 1208, 1212-13 (Wash. Ct. App. 2014) (citing *Christensen v.*
 12 *Royal Sch. Dist. No. 160*, 124 P.3d 283, 285 (Wash. 2005)).

13 Trident is entitled to summary judgment on this claim. To begin, Ms. Rodarte has
 14 presented no authority or argument for why Trident had a duty to obtain medical care for
 15 her (*see* Dkt.), nor is it apparent why Trident would have this duty. As such, Ms. Rodarte
 16 has not demonstrated the existence of a legal duty, a prerequisite to a negligence claim.
 17 *See Fabre*, 321 P.3d at 1212-13. Second, Ms. Rodarte appears to concede that she does
 18 not have a negligence claim. In her deposition, she was asked whether, assuming Mr.
 19 Heine did not know about her doctor visit on the morning she quit, Mr. Heine did
 20 anything wrong. (Rodarte Dep. at 232.) She responded that “of course” he would not
 21 have done anything wrong if he did not know of her visit at that time. (*Id.*) At present,
 22 all the evidence in the record shows that Mr. Heine did not know of Ms. Rodarte’s doctor

1 visit on that morning. (*See, e.g.*, Heine Decl. ¶ 11; Newberry Decl. ¶ 15.) As such, Ms.
2 Rodarte's failure to present evidence to the contrary is tantamount to an admission that
3 Mr. Heine, and therefore Trident, did not breach a duty to assist her in obtaining dental
4 care. Third, no reasonable jury could conclude that Trident acted negligently based on
5 the evidence presently before the court. Instead, the evidence suggests that Ms. Rodarte
6 never even properly asked Trident for help obtaining dental care for her toothache other
7 than her visit to Dr. Newberry. (Heine Decl. ¶¶ 11-14; Rodarte Dep. 114-15, 124, 145.)
8 In contrast, there is no evidence suggesting that Trident breached any duty to assist Ms.
9 Rodarte, whatever that duty may have been. As such, and for these reasons, Trident is
10 entitled to summary judgment on Ms. Rodarte's negligence claim.

11 **IV. CONCLUSION**

12 For the reasons discussed above, and having examined the record in its entirety,
13 the court GRANTS Trident's motion for summary judgment (Dkt. # 21) and DISMISSES
14 this case with prejudice.

15 Dated this 20th day of August, 2014.

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18
19 JAMES L. ROBART
20 United States District Judge
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